IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 17195 of 2007(V)

AS.55/2005 of SUB COURT, PAYYANNUR
OS.463/1999 of MUNSIFF COURT, THALIPARAMBA
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PETITIONER:
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1. **PERIYAD THEEYA SAMUDAYA SANGHAM,**
   P.O.MORAZHA, KANNUR DISTRICT,
   REPRESENTED BY ITS PRESIDENT.

2. **PERIYAD THEEYA SAMUDAYA SANGHAM,**
   P.O.MORAZHA, KANNUR DISTRICT.
   REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.B.PREMNATH (E)

RESPONDENTS:
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1. **K.VENUGOPALAN, S/O OTHENAN,**
   K.O.NILAYAM, PERIYAD, MORAZHA AMSOM,
   KANNUR DISTRICT.

2. **K.NARAYANAN, S/O RAMAN,**
   MACHIYATH HOUSE, PERIYAD, MORAZHA AMSOM,
   KANNUR DISTRICT.

3. **K.NARAYANI, D/O RAMAN,**
   MACHIYATH HOUSE, PERIYAD, MORAZHA AMSOM,
   KANNUR DISTRICT.

(CAUSE TITLE IS AS SHOWN IN THE IMPUGNED EXT.P4 ORDER AND IN THE PLAINT).

BY ADV. SRI.M.RAMESH CHANDER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.17195/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMISSION REPORT DT. 18.8.99 IN OS. 463/99, OF THE HONOURABLE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P2:- COPY OF THE COMMISSION REPORT DT. 20.3.03 AND PLAN O.S 463/99 OF THE HONOURABLE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P3:- COPY OF THE JUDGMENT AND DECREE IN OS. 463/99, DT. 29.10.04 OF THE HONOURABLE MUNSIFF'S COURT, TALIPARAMBA.

EXT.P4:- COPY OF THE ORDER DT. 29.8.06 IN IA. 399/05 IN AS.55/05 OF THE HONOURABLE SUB COURT, PAYYANNUR.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.17195 OF 2007

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Dated this the 18th day of July, 2007

JUDGMENT

This writ petition is filed challenging the order of the Sub Court, Payyannur in I.A.No.399 of 2005 in A.S.No.55 of 2005. The suit filed by the plaintiffs was dismissed by the trial court and against that an appeal is preferred and it is pending as A.S.No.55 of 2005 before the Sub Court, Payyannur. The trial court, on application of its mind, had refused to grant any relief in favour of the plaintiffs and the suit is only an injunction simplicitor. When such is the situation, the appellate court, while granting an order of injunction, is expected to apply its mind to the facts of the case and find out whether there is a prima facie case for granting injunction. The appellate court has granted an injunction on the ground that the appeal is pending against the judgment and decree passed by the court below. The said decision is erroneous.

Therefore the order under challenge is set aside and the learned Sub Judge is directed to dispose of I.A.No.399 of 2005 in A.S.No.55 of 2005 in accordance with law after hearing both sides, as expeditiously as possible, at

any rate, within 30 days from today. The petitioners are also permitted to file their counter, if it is not already filed.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-